S.B. CIVIL WRIT PETITION NO.6182/2007

Moti Lal Dangi.
vs.
Madhusudan Janwar and anr.

Date : 6.12.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.RK Thanvi a/w Mr.N Thanvi, for the petitioner.
Mr.MS Singhvi a/w Mr.R Dave, for the respondents.

- - - - -

Heard learned counsel for the parties.

The petitioner has challenged the order of the trial court dated 25.7.2006 by filing writ petition on 20.9.2007 after a delay of 14 months. Hence, the respondent has raised objection about maintainability of the writ petition and prayed that the writ petition dismissed only on the sole ground of delay in challenging the order dated 25.7.2006.

Learned counsel for the petitioner submitted that no limitation is provided for filing writ petitions which was applicable for revisions filed under Section 115 CPC and learned counsel for the petitioner heavily relied upon the judgment of the

Hon'ble Apex Court delivered in the case of State of U.P. and others vs. Raj Bahadur Singh and another reported in (1998) 8 SCC 685 wherein the Hon'ble Apex Court held that time limit for filing writ petition is not provided and the High Court has to see whether the laches on the part of the petitioner are such as to dis-entitle him to relief claimed by him. The Hon'ble Apex Court further held that the approach of the High Court was not right when it examined the matter as if it was a case under the Limitation Act, 1963. In the said case, the writ petition was filed after 1½ years after the Tribunal set aside the respondent's termination and the High Court dismissed the writ petition observing that there was no justified explanation for the delay. The Hon'ble Apex Court further held the dismissal was not proper. In view of the above, learned counsel for the petitioner submits that there is merit in the challenge to the order of the trial court, therefore, the writ petition may not be dismissed on the ground of delay and laches.

I considered the submissions of learned counsel for the petitioner and perused the impugned order.

So far as application of same limitation which is provided for challenging the orders of the Civil Court in revision petition under Section 115 CPC, that limitation has no application to the writs and, therefore, on that ground alone of preferring the writ petition after delay of 90 days, the writ petition straightaway cannot be dismissed.

So far as question of delay and laches on the part of the petitioner in a matter arising out of the proceedings in civil court are concerned, when the writ petition is filed, then the issues of delay and laches are required to be seen in the manner which is just and proper and in consonance with the scheme of Civil Procedure Code. Civil Procedure Code itself has been amended in the year 2002 to provide that unnecessary challenges may not be to the orders passed by the trial court and Section 115 CPC has been amended. That clearly indicates that there must be some limitation in challenging the interlocutory orders passed by the civil courts. The amendment of CPC resulted into challenging the orders of civil courts in writ jurisdiction which is supervisory jurisdiction of High Court. The whole purpose of amendment of CPC providing for fixed period to decide the suits as

far as possible and limiting the challenges to orders of trial court during trial so that the suit may be decided finally and not in piece-meal, will frustrate if a liberal view is taken in entertaining the writ petitions when the writ petitions are filed after inordinate delay. In view of this fact, the contention of the petitioner that since there is no limitation provided for challenging the order of the subordinate courts, therefore, the writ petition can be entertained, cannot be accepted as well as unless there is a special reason or cause submitted explaining the delay, the writ petitions cannot be entertained after inordinate delay.

It may be true that the powers of the High Court under Article 226 of the Constitution of India are not limited, therefore, in the interest of justice, the writ petition can be entertained after some delay but there must be reason for not challenging the order in time.

In view of the above reason, I do not find any reason to entertain this writ petition to challenge the order of civil court with delay of about 14 months and when there is no reasonable reason for not challenging the order in time.

So far as the judgment of the Hon'ble Apex

Court in the case of Raj Bahadur Singh (supra) is concerned, it has been passed in peculiar facts of the case and is not the declaration of law that in all cases, the Courts have no jurisdiction to dismiss the writ petition on the ground of delay and laches. In that case, on facts, the Hon'ble Apex Court found that the High Court should not have dismissed the writ petition on the ground of delay or laches when the writ petition was filed after delay.

In view of the above, this writ petition is dismissed on the ground of delay and laches only.

However, the petitioner will be free to challenge the impugned order in appeal in case any occasion arises for the petitioner to do so and legally, if he can challenge the said order.

(PRAKASH TATIA), J.

S.Phophaliya